IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24675 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUAJRAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
CHAGAN D.BHIMANI - Respondent(s)

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Appearance :
MR RITURAJ M MEENA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 31/07/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.R.M.Meena, appearing on behalf of petitioner and learned

Advocate, Mr.K.M.Paul, appearing on behalf of respondent.

2. In the present petition, the petitioner has challenged the award passed by Industrial Tribunal, Rajkot in Reference (IT) No.198 of 1994 dated 17.5.2005. The Industrial Tribunal has modified the punishment from stoppage of four increments with permanent effect to stoppage of four increments without permanent effect. The Industrial Tribunal has also directed not to pay any amount of arrears / different of salary because of this modification to the respondent workman.

3. This Court has issued Rule and ad-interim relief has been granted. Today, with the consent of both the learned Advocates for the respective parties, matter is taken up for final hearing.

4. The respondent workman was working as conductor. By order dated 30.12.1989, his four

increments have been stopped with permanent effect. Against which, dispute was raised which referred for adjudication to the Industrial Tribunal, Rajkot. The statement of claim was filed by workman and according to him, due to this punishment, each month Rs.250/- to Rs.300/- loss would be caused in his monthly salary which remained continued upto the date of retirement. The written statement filed by Corporation raising contention that due to negligence and irregularity, after following the procedure of natural justice and giving reasonable opportunity to the workman, punishment order has been issued by the competent authority. His past record is bad, therefore, punishment which was imposed by the competent authority is legal and valid as well as reasonable. On behalf of the Corporation, inquiry papers and relevant records have been produced on record which have been exhibited by the Industrial Tribunal, Rajkot. The respondent workman was examined vide Exh.6. No oral evidence led by the Corporation before the Industrial

Tribunal. The workman has not challenged the legality and validity of departmental inquiry by purshish Exh.27 and requested to the Industrial Tribunal to exercise the power under Section 11A of the I.D.Act,1947. Thereafter, both the learned Advocates made their submissions before the Industrial Tribunal and ultimately, the Industrial Tribunal has framed the issue and thereafter, considered the merits of the matter.

5. The Industrial Tribunal has considered that on 20.7.1989, when respondent workman was on route from Jodiya to Jasafar, at that occasion, six different group of passengers boarded in the bus from Bhadara Patia to Kesiya. Against them, though fare was recovered but tickets were not issued by the respondent workman. After departmental inquiry, no second show cause notice was served to the workman. Spot statement was given by the workman on 20.7.1989 to the checking inspector. The spot statement of the workman suggests that he was doing road booking and just

about to issue the tickets to the passengers, meanwhile stand come and checking inspector immediately entered in the bus and not allowed to issue the tickets to him. Therefore, checking inspector has stopped him from issuing the tickets. Though fare was collected by the workman, but transaction was not completed and meanwhile the bus was checked by the checking staff. Therefore, unpunched tickets were taken by the checking staff. In the spot statement, respondent workman has made clear that it was not bad intention not to issue tickets, but he was just about to issue tickets after taking the amount of fare and meanwhile checking came and he was not able to issue tickets because of checking staff. The important fact which was noted by the Industrial Tribunal that it was a default on the part of the passengers, therefore, 10 time penalties were paid by the passengers to the checking staff. On the basis of this factual aspect, which according to I.O., found on record, punishment of stoppage of four increments with

cumulative effect has been stopped. The Industrial Tribunal has appreciated the spot statement of the workman and factually it was correct statement because 10 time penalties was recovered from passengers because of not obtaining the ticket from the conductor in time, therefore, Industrial Tribunal has considered the past record and length of service of 17 years and adverse effect in the salary each month Rs.500/- loss caused to the workman. The Industrial Tribunal has also considered that this loss of Rs.500/- remained till the workmen has retired from the service. The Industrial Tribunal has also considered that in past default, 11 misconduct have been committed but, such type of incident was first and, therefore, according to Industrial Tribunal, the punishment which was imposed by the competent authority is harsh and unjustified. Therefore, the Industrial Tribunal has come to the conclusion that at the most it amounts to breach of Rules but, not the dishonesty or misappropriation on the part of the

workman. Therefore, without giving any arrears or difference of salary to the concerned workman, the punishment is modified from permanent effect to without cumulative effect which would meet the ends of justice. Accordingly, the Industrial Tribunal has modified the punishment.

6. I have perused the award passed by Industrial Tribunal and have also considered the reasons given by the Industrial Tribunal. Looking to the incident as it is narrated by the workman on spot statement dated 20.7.1989, it appears that the respondent workman was about to issue the tickets in road booking and meanwhile checking staff checked the bus and not allowed to issue the tickets to the passengers. The amount of fare was in the hand of the conductor and it was a fault on the part of the passengers and, therefore, 10 time penalties was imposed against the passengers which was paid by the passengers. Therefore, the Industrial Tribunal has considered past record, 11 defaults, but no such type of default and this

was being first default. The Industrial Tribunal has considered the loss of Rs.500/- each month which remained continued upto his retirement and considered that it is not a case of dishonesty or misappropriation, but it amounts to breach of Rules and, therefore, considering the length of service about 17 years, the Industrial Tribunal has modified the punishment which ultimately workman will get after a period of four years and no arrears / difference of salary has been granted in favour of respondent workman. Therefore, according to my opinion, the Industrial Tribunal has jurisdiction and power to modify the punishment under Section 10(1) by terms of reference itself read with 2nd schedule, Item No.1 of I.D.Act,1947. That view has been taken by the Full Bench of this Court in case of Gujarat State Road Transport Corporation Vs. D.V.Chauhan, reported in 2006 (2) GLH 64, wherein, Full Bench has considered that irrespective of the provisions of Section 11A of the I.D.Act,1947, in case of other punishment

except dismissal, discharge / termination, the Industrial Tribunal / Labour Court has power to interfere with the punishment while deciding the legality and validity of punishment order as per 2nd Schedule, Item No.1. Therefore, the Industrial Tribunal has jurisdiction to interfere with the punishment which has been rightly interfered with by the Industrial Tribunal and modified the same looking to the facts on record. Therefore, according to my opinion, the Industrial Tribunal has not committed any error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition is disposed of. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)